



REQUEST FOR QUALIFICATIONS

RFQ 14-07

Bicycle, Pedestrian, and Trail Plan

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REQUEST FOR QUALIFICATIONS (RFQ)

Bicycle, Pedestrian, and Trail Plan

Introduction

Sealed Qualifications for Purchasing RFQ 14-07 Bicycle, Pedestrian, and Trail Plan (hereinafter referred to as “Request for Qualifications” or “proposals”). Procurement will be received by the City of Brookhaven, hereinafter called “City.” Service providers whose qualifications meet the criteria established in the Request for Qualifications, at the sole discretion of the City, may be considered for Contract award. The City may, by direct negotiation, finalize terms with the service provider who is selected for award based on proposals. The City reserves the right to reject any or all responses for any reason. Clarification of information may be requested by the City.

The City, at its sole discretion, may short-list firms that are deemed to best meet the City’s requirements, taking into consideration all criteria listed in the RFQ. The City may, at its sole discretion, ask for formal presentations from all of the responsive and responsible proposers, or only from those firms that are short-listed, if short-listing is determined to be in the best interest of the City. Negotiations will be conducted and may take place in person or via telephone with the most qualified firm as identified by the City or, if short-listing occurs, with all of the short-listed proposers. Proposers that participate in the negotiations may be given an opportunity to submit their best and final offers. The City of Brookhaven requires pricing to remain firm for the duration of the contract. Failure to hold firm pricing for the duration of the contract will be sufficient cause for the City to declare a proposal non-responsive.

A proposal must be submitted in a sealed envelope which shall be clearly marked Purchasing RFQ 14-05 One (1) printed and signed original, and two (2) paper copies, and one (1) electronic copy in PDF of the **proposals shall be submitted no later than 2:00pm, January 13, 2015**. Proposals will not be submitted by facsimile or e-mail. Any proposal received after the time and date specified for the opening of the proposals will not be considered, but will be returned unopened.

Proposers are expected to be familiar with the proposal documents and to provide the City with any questions regarding the proposal documents by the deadline for questions to be submitted.

Questions regarding proposals should be directed to purchasing@brookhavenga.gov no later than December 30, 2014 at 5:00 pm. Proposals are legal and binding when submitted.

Proposal must be addressed as follows: Purchasing Department
City of Brookhaven
4362 Peachtree Rd.
Brookhaven, GA 30319

No Proposal may be withdrawn for a period of ninety (90) days after the time and date scheduled (or subsequently rescheduled) for proposal opening.

The City's staff will review all proposals submitted. After reviewing the proposals, staff may, at its discretion, request formal presentations from one or more of the proposers (at proposer's expense at the City's site) whose proposals appear to best meet the City's requirements.

The proposer awarded the Contract must provide proof of professional liability insurance in the amount of one million dollars (\$1,000,000.00), along with any other required insurance coverage and evidence of business or occupational license, as outlined in the Proposal Documents.

The City reserves the right to waive any informalities or irregularities of proposals, to request clarification or information submitted in any proposal, to request additional information from any proposer, or to reject any or all proposals, and to re-advertise for proposals. The City also reserves the right to extend the date or time scheduled for the opening of proposals.

Award, if made, will be to the responsible and responsive proposer submitting the proposal which is deemed by the City, in the sole discretion, to be the most advantageous to the City, price and other factors being considered.

To ensure the proper and fair evaluation of proposals, the City highly discourages any communication initiated by a proposer or its agent to a representative of the City evaluating or considering the proposal during the period of time following the issuance of the RFQ, the opening of proposals and prior to the time a decision has been made with respect to the Contract award. Persons seeking an award of a City contract may not initiate or continue any verbal or written communications regarding a solicitation with any Official, Employee or other City representative other than an appropriate Purchasing employee of the City between the date of solicitation and the date of the final contract. An appropriate Purchasing employee of the City may initiate communication with a proposer in order to obtain information or clarification needed to develop a proper and accurate evaluation of the proposal. Any communication initiated by proposer during evaluation should be submitted in writing and delivered to the City of Brookhaven, Purchasing Office, 4362 Peachtree Rd., Brookhaven, Georgia 30319, or by e-mail to purchasing@brookhavenga.gov or facsimile to (404) 637-0481. Unauthorized communication by the proposer shall disqualify the proposer from consideration.

The Proposer must adhere to a high standard of ethics, as articulated in Subsection A of Section IV of the City of Brookhaven's Financial Management Policies and Purchasing Policy. The Proposer must adhere to the prohibition against Gratuities, Rebates, or Kickbacks as articulated in Section B of Section IV of the City of Brookhaven's Financial Management and Purchasing Policy.

PART ONE – SPECIFICATIONS

1.1 BACKGROUND:

Brookhaven, Georgia's newest city is seeking Professional Services from firms with experience in multimodal transportation planning and engineering for the development of a comprehensive Bicycle, Pedestrian, and Trail Plan. The project focus will be to develop a city-wide plan that provides both a map for future investment as well as a prioritized list of feasible and cost-effective projects.

The successful proposer(s) will have experience with and knowledge of the various technical aspects of the following:

1. Pedestrian facility planning and design;
2. Bicycle facility planning and design;
3. Recreational and transportation trail planning and design;
4. Public involvement techniques and applications;
5. Data analysis, synthesis and documentation;
6. Policy and ordinance development;
7. Geographic information System (GIS) analysis;
8. Development of cost estimates and funding scenarios; and
9. Current state of the practice as it relates to multimodal system design and development.

The overall goal of developing a Bicycle, Pedestrian, and Trail Plan is to provide a safe, connected, and efficient transportation system for the citizens of Brookhaven. Supporting objectives include:

- Reflecting community and policy-maker input.
- Identifying a technically sound and feasible program of investments.
- Creating a safe system which minimizes modal conflicts.
- Developing an integrated pedestrian and bicycling network that accommodates a wide range of users and abilities from children to seniors.

The Bicycle, Pedestrian, and Trail Plan will further goals and objectives of the *City of Brookhaven Comprehensive Transportation Plan*, *City of Brookhaven Comprehensive Plan 2034*, *Buford Highway Improvement Plan and Economic Development Strategy*, *City of Brookhaven 2014 Comprehensive Parks and Recreation Master Plan*, *Perimeter CID's Bicycle and Pedestrian Plans*, *City of Sandy Spring Bicycle and Pedestrian Plans*, *ARC Bicycle and Pedestrian Plans*, *GDOT Bicycle Network Planning*, existing local trail plans, and adopted LCI studies.

The City of Brookhaven is a city of over 50,000 people located in north DeKalb County, Georgia. Incorporated in 2012, the City completed the *Comprehensive Transportation Plan*, the *City of Brookhaven Comprehensive Plan 2034*, and *City of Brookhaven 2014 Comprehensive Parks and*

Recreation Master Plan in 2014 and has within its jurisdiction a Livable Centers Initiative (LCI) study area at Brookhaven-Peachtree. The City also recently completed a *Buford Highway Improvement Plan and Economic Development Strategy* to provide a vision for redeveloping this critical corridor in the southern portion of the city.

The city is bordered by Interstate 285 on the north, Fulton County on the west, Interstate 85 and Briarcliff Road on the south, and the City of Chamblee on the east. Adjacent jurisdictions include Fulton County, unincorporated DeKalb County and Cities of Dunwoody, Chamblee, and Atlanta. Located along its northern boundary, Perimeter Center is one of the largest employment centers within the southeast. Brookhaven is served by MARTA transit and has one heavy rail stations which connect to the MARTA Gold Line as well as local bus routes.

Brookhaven is developing programs, policies, and regulatory triggers to advance the development of multimodal infrastructure throughout the City. The City has a capital Sidewalk Program budgeted annually which funds the design and construction of sidewalks. In addition, the Development Ordinance requires construction of sidewalks on property frontages on certain roads through zoning, building and land disturbance permit applications as well as subdivision platting. The Bicycle, Pedestrian, and Trail Plan presents an opportunity to integrate completed investments into a comprehensive system of pedestrian and bicycle facilities as well as developing and refining policies and ordinances that will encourage and promote the development of multimodal and active transportation networks.

1.2 SCOPE OF WORK

The City of Brookhaven is seeking proposals for consideration to accomplish the following:

Develop a comprehensive Bicycle, Pedestrian, and Trail Plan that provides a safe, connected and integrated network of pedestrian, bicycle, and multipurpose trail facilities throughout the City and connect to a regional network.

1. Existing Conditions Inventory; Policies, Zoning, and Development Regulations Review. The Consultant shall prepare an existing conditions inventory of bicycle, pedestrian, and trail facilities within the City as well as those of neighboring jurisdictions that provide regional connections. The inventory should be compatible with ESRI geodatabase. In addition, the Consultant shall develop base maps of relevant community characteristics including, but not limited to, community origins and destinations, socioeconomic characteristics and previously identified projects, including those from the *City of Brookhaven Comprehensive Transportation Plan, DeKalb County Comprehensive Transportation Plan, City of Brookhaven 2014 Comprehensive Parks and Recreation Master Plan, Buford Highway Improvement Plan and Economic Development Strategy, Brookhaven-Peachtree Livable Centers Initiative (LCI), PCID LCI, PCID Commuter Trail System Plan*, and other relevant plans. The Consultant shall review the City's Zoning Ordinance and Development Regulations and relevant City policies to gain an understanding of existing regulatory conditions.
2. System Appraisal and Evaluation. The Consultant shall develop a technically sound appraisal and evaluation approach, based on the current state of the practice, for determining existing and future needs for pedestrian, bicycle, and trail development. Evaluation techniques may include travel demand, gap analysis, and non-motorized travel level of service as well as a safety or crash assessment. The Consultant shall assess the existing city street network to determine suitability, safety, and feasibility for the addition of pedestrian, bicycle, or trail facilities. The Consultant should consider the League of American Bicyclists Bicycle Friendly Community and Safe Routes to School evaluation factors in its assessment. The evaluation should give priority to providing viable

connections to the Peachtree Road Corridor, Buford Highway Corridor, Perimeter Center, existing and proposed transit stations and routes, schools, parks, and other community destinations. The evaluation shall include a screening of suitability for providing mid-block crossing(s) on all arterial and collector roads. Both the transportation and recreational aspects of non-motorized travel should be evaluated.

3. Bicycle, Pedestrian, and Trail Network Development. The Consultant shall develop a comprehensive and integrated network of pedestrian, bicycle, and trail facilities. The system should include on-road and off-road connections that can serve transportation and recreational uses as well as mid-block crossing improvements. The facility network should identify shared-use and independent modal facilities and consider a variety of user abilities and ages, including supporting the goals of the Safe Routes to School program and Lifelong Communities. The Consultant shall develop a Sidewalk Master Plan for the city.
4. Recommendations and Implementation Plan. The Consultant shall develop Pedestrian, Bicycle, and Trail Plan network map(s) to identify a long-range vision and policy for an integrated, comprehensive, safe, and feasible non-motorized transportation system that complements the existing transportation network of streets, sidewalks, and trails. The bicycle network should specifically identify facility type, i.e., bicycle lane, cycle track, path, or shared lanes. The Consultant shall identify recommendations for complementary facilities to include parking, crossings, benches, and other amenities to support walking and bicycling. The Consultant shall develop a ten-year implementation program split into two five-year ranges of specific projects for short and mid-range implementation. Projects shall be defined consistent with the requirements of the Georgia Department of Transportation (GDOT) Plan Development Process (PDP) to include need and purpose, logical termini, and planning-level cost estimate. Program recommendations should include the following: project descriptions, scaled, concept-level drawings, estimated costs to include design, construction, right of way acquisition, and utilities relocation, and a suggested scoring methodology to aid decision-makers in formulating budgets to implement plan recommendations. The Consultant shall identify and document potential funding options through local, state, federal, and non-governmental organization programs and public-private partnership opportunities. The Consultant shall prepare recommendations for modification to policies, zoning and development regulations to facilitate Plan implementation.
5. Public Involvement and Outreach. The Consultant shall develop a broad and representative public involvement program that reflects the Atlanta Regional Commission (ARC) Community Engagement Plan principals and is inclusive of populations typically underrepresented in the transportation planning process, including Environmental Justice communities. Elements of the public involvement plan shall include up to four public information meetings, up to 20 stakeholder interviews or policy briefings, an outreach plan coordinated with the City's Communication department, Web 2.0 techniques, and other outreach tools as identified by the Consultant to support community input and development of the Plan. Consultant shall be responsible for development of outreach materials and presentations, meeting notes, and concise public input summaries.
6. Project Management. The Consultant shall develop a Project Management Plan (PMP) to support Plan development including a detailed schedule of project tasks, meetings, and deliverables; project contacts and staff organizational chart; client coordination meetings; and quality control process.

1.3 Deliverables

The primary deliverable is a Bicycle, Pedestrian, and Trail Plan. Elements of this plan shall include but is not limited to:

- Maps, charts, and narrative to support Tasks 1 through 3
- Sidewalk Master Plan
- Public Involvement Plan and Public Outreach Materials
- Project Management Plan
- Recommendations and Implementation Plan (Suitable for web-hosting)
 - Executive Summary
 - Report and Supporting Technical Appendices
 - Pedestrian, Bicycle, and Trail Plan Network Map(s)
 - Ten-year Implementation Program
 - Up to 10 Scaled, Concept-Level Drawings Illustrating Recommended Projects
 - Funding Options
 - Policy and Development Implementation Strategies
 - Project Website

Ten (10) bound copies of the final Plan and 20 copies of the Executive Summary shall be provided to the City as well as an electronic copy suitable. All documentation shall be compatible with MS Office products. All concept drawings shall be compatible with Microstation or AutoCAD. All GIS files shall be in ESRI format (Version 10.0 or below, file geodatabase), projected to NAD83 Georgia State Plane Coordinate System West Zone (feet).

PART TWO – PROPOSAL CONTENTS

To aid in thorough and consistent review, the proposal shall be organized and numbered to correspond to Section I through Section VI, with particular emphasis given to Section II:

SECTION I: COVER LETTER - Each proposal shall include a cover letter with the Proposer's address, telephone number, e-mail address. The cover letter should be signed by the Proposer or an authorized representative of the Proposer.

SECTION II: PROJECT APPROACH AND UNDERSTANDING – Firms shall demonstrate an understanding of the project objectives. The firm must also demonstrate an understanding of the City's goals, the project issues and challenges and how they may affect project delivery.

SECTION III: PROJECT EXPERIENCE AND REFERENCES- Please provide a description of a minimum of three (3) projects completed in the past five (5) years that involve requirements similar to the requirements specified in the Scope of Work for this project. For each of the representative projects, provide a client contact. Proposers failing to provide a contact for each project will be deemed non-responsive.

SECTION IV: PROJECT TEAM - Each proposer shall provide an organization chart of the project and resumes of the key personnel.

SECTION V: PROJECT SCHEDULE - Each proposer shall submit a proposed project schedule.

SECTION VI: REQUIRED FORMS - Each proposer shall submit the following completed and executed forms:

- Proposal Form
- E-Verify Form
- Affidavit Verifying Status for City Public Benefit Application

Proposals shall be limited to twenty-five (25) single sided 8 ½" x 11" (One 11" x 17" Organizational Chart or Schedule will be allowed as part of the 25 pages). Required forms will not be counted as part of the page limit.

PART THREE- EVALUATION OF QUALIFICATIONS

Based on the proposals submitted in response to this RFQ, the Selection Committee will identify the most qualified firm. The Committee will evaluate all submittals deemed responsive and each evaluator will assign points using the criteria identified as follows:

- Project Approach and Understanding (40%)
- Project Experience and References (25%)
- Project Team (25%)
- Project Schedule (10%)

The points assigned to each criterion will be totaled for each evaluator and a rank will be

determined. The firm(s) with the highest rankings determined by using the sum of scores will be determined to be the most qualified firm(s).

After reviewing the qualifications, staff may, at its discretion, invite to interview (at proposer's expense at the City's site) one or more of the top ranked firms. Interview responses along with the written proposal, will become part of proposer's submission to be evaluated pursuant to the evaluation criteria.

* * * * * END OF SPECIFICATIONS * * * * *

PROPOSAL FORM

CITY OF BROOKHAVEN

RFQ 14-07 BICYCLE, PEDESTRIAN, AND TRAIL PLAN

The undersigned, as Proposer, hereby declares that this Proposal of Qualifications is in all respects fair and submitted in good faith without collusion or fraud. Proposer represents and warrants to the City that: (i) except as may be disclosed in writing to the City with its Proposal, no officer, employee or agent of the City has any interest, either directly or indirectly, in the business of the Proposer, and that no such person shall have any such interest at any time during the term of the Contract should it be awarded the Contract; and (ii) no gift, gratuity, promise, favor or anything else of value has been given or will be given to any employee or official of the City in connection with the submission of this Proposal or the City's evaluation or consideration thereof.

The Proposer further represents that it has examined or investigated the site conditions if necessary, and informed itself fully in regard to all conditions pertaining to the place where the work is to be done; that it has examined the Contract Documents and has read all Addendum(s) furnished by the City prior to the opening of the Proposals, as acknowledged below, and that it has otherwise fully informed itself regarding the nature, extent, scope and details of the services to be furnished under the Contract.

The Proposer agrees, if this Proposal of Qualifications is accepted, to negotiate in good faith with the City in order to enter into the Contract (properly completed in accordance with said Proposal Documents), and the Contract Documents for RFQ 14-?? Bicycle, Pedestrian and Trail Plan, at the City of Brookhaven, and to furnish the prescribed evidence of a valid business license, insurance, and all other documents required by these Contract Documents. The Proposer further agrees to commence work and to perform the work specified herein within the time limits set forth in the Contract Documents, which time limits Proposer acknowledges are reasonable.

The undersigned further agrees that, in the case of failure or refusal on its part to execute the said contract, provide evidence of specified insurance, a copy of a valid business or occupational license and all other documents required by these Contract Documents within ten (10) business days after being provided with Notice of Intent to Award the contract (or such earlier time as may be stated elsewhere in these Proposal Documents), the Proposal award may be offered by the City to the next ranked Proposer, or the city may re-advertise for Proposals, and in either case the City shall have the right to recover from the Proposer the City's costs and damages including, without limitation, attorney's fees, to the same extent that the City could recover its costs and expenses from the Proposer under section 10 of the Instructions to Proposers if the Proposer withdrew or attempted to withdraw its Proposal.

The Proposer further agrees, if it fails to complete the work according to the Specification within the scheduled time or any authorized extension thereof, that damages may be deducted from the Contract price otherwise payable to the Proposer.

The Proposer agrees to abide with the City of Brookhaven's Financial Management Policies and Purchasing Policy.

Acknowledgement is hereby made of the following Addendum(s) received since issuance of the Contract Documents (identified by number)

Addendum No.	Date	Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

It shall be the responsibility of each Proposer to visit the City Purchasing Department's website to determine if addendum(s) were issued and, if so, to obtain such addendum(s). Failure to acknowledge an addendum above shall not relieve the Proposer from its obligation to comply with the provisions of the addendum(s) not acknowledged above.

The City of Brookhaven requires pricing to remain firm for the duration of the initial term of the contract. Failure to hold firm pricing for the initial term of the contract will be sufficient cause for the City to declare bid non-responsive.

Termination for Cause: The City may terminate this agreement for cause upon ten days prior written notice to the Consultant of the Consultant's default in the performance of any term of this agreement. Such termination shall be without prejudice to any of the City's rights or remedies by law.

Termination for Convenience: The City may terminate this agreement for its convenience at any time upon 30 days written notice to the Consultant. In the event of the City's termination of this agreement for convenience, the Consultant will be paid for those services actually performed. Partially completed performance of the agreement will be compensated based upon a signed statement of completion to be submitted by the Consultant, which shall itemize each element of performance.

Termination for fund appropriation: The City may unilaterally terminate this Agreement due to a lack of funding at any time by written notice to the Consultant. In the event of the City's termination of this Agreement for fund appropriation, the Consultant will be paid for those services actually performed. Partially completed performance of the Agreement will be compensated based upon a signed statement of completion to be submitted by the Service Provider which shall itemize each element of performance.

The contractor agrees to provide all work to complete the project described in this document for the amount listed below.

Legal Business Name _____

Federal Tax ID _____

Address _____

Does your company currently have a location within the City of Brookhaven? Yes ___ No ___

Representative Signature _____

Printed Name _____

Telephone Number _____

Fax Number _____

Email Address _____

INSTRUCTIONS TO PROPOSERS

1. INTENT

It is the intent of these Instructions to establish guidelines for the proper completion of the Proposal Forms. These Instructions to Proposers provide guidance and explanation for subsequent Proposal Forms and Contract Documents. Please read all Instruction paragraphs.

2. GENERAL

- 2.1 The City's goal is that all the terms and conditions stated in the Proposal Documents and Appendix B Sample Contract will constitute the terms of the final Contract between the City and the successful Proposer. Notwithstanding, the City will engage in good faith negotiation over the price and terms prior to awarding the contract.
- 2.2 The Contract work shall not be divisible, and shall be awarded, if an award is made, to a single Proposer. The City will award only one contract for the services required under this Request for Qualifications.
- 2.3 [Intentionally Omitted].
- 2.4 The Contract, if awarded, shall not be construed to create unto the Contractor any exclusive rights with respect to any of the City's branding requirements. The City may in its sole discretion award any additional or similar services to any third party, or if the Contract is for the provision of services, the City may elect to perform all or a portion of the services by its own employees.
- 2.5 There shall be no reimbursements or travel expenses associated with this project regarding any category or term.
- 2.6 [Intentionally omitted].
- 2.7 The City will negotiate with the successful Proposer to provide services indicated in the Specifications throughout the duration of the Contract.

3. [Intentionally Omitted].

4. EXAMINATION OF PROPOSAL/CONTRACT DOCUMENTS

All prospective Proposers shall thoroughly examine and become familiar with the Proposal package and carefully note the items which must be submitted with the Proposal. (These Instructions to Proposers, the Request for Qualifications, the Proposal Forms, the Contract, the General Conditions, and all attached Appendixes are referred to herein as the "Proposal Documents" or the "Contract Documents.") Submission of a Proposal shall constitute an acknowledgment that the Proposer has read and understands the Proposal Documents. The failure or neglect of a Proposer to receive or examine any Proposal Document shall in no way relieve it from any obligations under its Proposal or the Contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge or understanding of any of the Contract Documents or the scope of work.

5. ADDENDUM(S)-CHANGES WHILE PROPOSING

Other than during the Pre-Proposal Conference, the City shall not be required to provide to any Proposer verbal interpretations as to the meaning of any portion of the Proposal Documents. Requests for interpretation, clarification or correction of Proposal Documents, forms or other material in this Proposal Package should be made in writing and delivered to the City, Purchasing Office, 4362 Peachtree Rd., Brookhaven, Georgia 30319, or by e-mail to purchasing@brookhavenga.gov or facsimile to (404) 637-0481 at least five (5) business days before the date and time announced for the Proposal opening. Any response by City to a request by a Proposer for clarification or correction will be made in the form of a written Addendum. All parties to whom the Proposal packages have been issued will be sent a notification of the issuance of an Addendum either by e-mail and/or by facsimile. The Addendum may be electronically downloaded by visiting either the City Purchasing Department's web site at <http://brookhavenga.gov/city-departments/purchasing/open-rfps> or by visiting Georgia's Department of Administrative Services (DOAS) web site at http://ssl.doas.state.ga.us/PRSapp/GPR_P_start.jsp. However, prior to submitting its response, it shall be the responsibility of each Proposer to visit the City Purchasing Department's website to determine if addendum(s) were issued and, if so, to obtain such addendum(s).

6. PROPOSAL GUARANTY

A Proposal Guaranty shall not be required for this Contract.

7. DELIVERY OF PROPOSALS

- 7.1 All Proposals shall be submitted pursuant to the terms outlined in these Instructions to Proposers and the Request for Qualifications. Any Proposals received after the time and date specified in the Request for Qualifications for the opening of the Proposals will not be considered, but will be returned unopened.
- 7.2 Each Proposer's response to the Request for Qualifications shall be at the sole cost and expense of the Proposer and such Proposer shall have no right or claim against the City for costs, damages, loss of profits, or to recover such costs, damages, or expenses in the event the City exercises its right to reject any or all Proposals or to cancel an award pursuant to a provision hereof for any reason.
- 7.3 Submission of a Proposal shall constitute authorization for the City and its representatives and agents to make such copies of the Proposal or portions thereof and to distribute such copies as may be necessary or desirable to carry out the City's objectives or requirements.

8. DISQUALIFICATION OF PROPOSERS

- 8.1 Any of the following causes may be considered as sufficient for the disqualification of a Proposer and the rejection of its Proposal:
 - 8.1.1 Submission of more than one Proposal for the same work, or participation in more than one Proposal for the same work as a partner or principal of the Proposer, by an individual, firm, partnership or corporation, under the same or different names, or by Proposers which are affiliates, either at the time of submittal, or at the time of award. For purposes of this section, the term "affiliates" means firms, partnerships, corporations or other entities under common control;
 - 8.1.2 Evidence of collusion between or among Proposers;
 - 8.1.3 Evidence, in the opinion of the City, of Proposer(s) attempting to manipulate the Proposal pricing for its own benefit (e.g. pricing resulting in a failure of the City's ability to enforce the Contract or impose the remedies intended following breach by Contractor);
 - 8.1.4 Being in arrears on any of its existing contracts with the City or in litigation with the City or having defaulted on a previous contract with the City;
 - 8.1.5 Poor, defective or otherwise unsatisfactory performance of work for the City or any other party on prior projects which, in the City's judgment and sole discretion, raises doubts as to Proposer's ability to properly perform the work; or
 - 8.1.6 Any other cause which, in the City's judgment and sole discretion, is sufficient to justify disqualification of Proposer or the rejection of its Proposal.
 - 8.1.7 Evidence of improper communication.
- 8.2 The City has adopted a policy which addresses, among other things, the obligations of the City's employees with respect to interest in business entities, unauthorized compensation and acceptance of gifts. Please be aware that any act by a Proposer that could cause a City employee to violate the policy is sufficient cause for the denial of the right of the Proposer to propose on any contract or sell any materials, supplies, equipment, or services to the City for a period of time that is determined by the City Manager.

9. RESPONSIBILITY OF PROPOSERS

- 9.1 City reserves the right, to aid it in determining a Proposer's responsibility, to require a Proposer to submit additional evidence of Proposer's qualifications as the City may deem necessary, and may consider any evidence available to the City of the financial, technical, and other qualifications and abilities of a Proposer, including past performance (experience) with the City and others. The City shall be the final authority in the award of any and all Proposals.
- 9.2 For a Proposer to meet the minimum responsibility criteria for this Contract, the Proposer must provide verifiable evidence, through references or otherwise, that the Proposer is an individual, a firm, a corporation, or other entity that is currently employed or otherwise engaged in providing branding services and, taking into account the activities of a related predecessor, affiliate, or principal of Proposer, has been actively engaged in such activity for at least three (3) years immediately preceding the date of the Proposer's response to this request.

10. GUARANTY OF FAITHFUL PERFORMANCE

A Performance Bond shall not be required for this Contract.

11. POWER OF ATTORNEY AND COUNTERSIGNATURE

Not applicable.

12. MINORITY AND WOMEN BUSINESS ENTERPRISE ("MWBE") PARTICIPATION

An MWBE participation goal has not been established for this Contract. Such participation is encouraged, but will not be considered during the evaluation process for award of this Contract.

13. LOCAL DEVELOPING BUSINESS ("LDB") PARTICIPATION

An LDB participation goal has not been established for this Contract. Such participation is encouraged, but will not be considered during the evaluation process for award of this Contract.

14. NO RESPONSE

In the event a potential Proposer elects not to submit qualifications, such potential Proposer is nonetheless requested to respond by advising the City of the reason for not submitting qualifications.

15. PUBLIC RECORDS/PUBLIC MEETINGS

Please be aware that all meetings of the City's Council are duly noticed public meetings and all documents submitted to the City as a part of or in connection with a Proposal may constitute public records under Georgia law regardless of any person's claim that proprietary or trade secret information is contained therein. By submission to the City, Proposers waive any declaration that their entire response to be proprietary information. Proposals and all related correspondence are subject to the Georgia Open Records Act and may be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in vendor proposals unless provided for under the open records law. In the event, the proposer deems certain information to be exempt from the disclosure requirements, the proposal must specify what content is considered exempt and cite the applicable provision of the law to support that assessment. In the event such information is requested under the open records law, the proposer's assessment will be examined by the City Attorney who will make a determination. The decision to withhold or release the information will be at the City's sole discretion.

* * * * * END OF INSTRUCTIONS TO PROPOSERS * * * * *

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Brookhaven has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Brookhaven at the time the subcontractor(s) is retained to perform such service.

E-Verify * User Identification Number

Company Name

BY: Authorized Officer or Agent Date
(Contractor Signature)

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

_____ DAY OF _____, 200__

Notary Public

My Commission Expires:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is "E-Verify" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**Affidavit Verifying Status
for City Public Benefit Application**

By executing this affidavit under oath, as an applicant for a City of Brookhaven, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit or other public benefit as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Brookhaven, Business License or Georgia Occupational Tax Certificate, Alcohol License, Taxi Permit or other public benefit (circle one) for

[Name of natural person applying on behalf of individual, business, corporation, partnership, or other private entity]

1) _____ I am a United States citizen

OR

2) _____ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.*

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

Signature of Applicant: Date

Printed Name:

SUBSCRIBED AND SWORN

BEFORE ME ON THIS THE

____ DAY OF _____, 20__

* _____

Alien Registration number for non-citizens

Notary Public

My Commission Expires:

*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of “alien”, legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

Exhibit A

SAMPLE CONTRACT FOR PROFESSIONAL SERVICES

This **CONTRACT** made and entered into this ___ day of _____, 2015 by and between the City of Brookhaven, (Party of the First Part, hereinafter called the "City"), and _____ (Party of the Second Part, hereinafter called the "Service Provider" or "Contractor").

NOW THEREFORE, for and in consideration of the mutual promises and obligations contained herein and under the conditions hereinafter set forth, the parties do hereby agree as follows:

1. TERM:

The services to be performed under this Contract shall commence on the date hereof. The initial term of this Contract shall be through December 31, 20__.

2. ATTACHMENTS:

The following documents are attached as Exhibit B and are specifically incorporated herein by reference; and, along with this Contract and the General Conditions attached as Exhibit A encompass all of the Contract documents:

Exhibit A: General Conditions

Exhibit B: Scope of Work/Request for Qualifications

Statement of Qualifications of Service Provider

3. PERFORMANCE:

Service Provider agrees to furnish all skill and labor of every description necessary to carry out perform the services in accordance with the Contract Documents (the "work").

4. PRICE:

The City agrees to pay the Service Provider following receipt by the City of a detailed invoice, reflecting the actual work performed by the Service Provider, provided, however, Service Provider guarantees that the maximum price for labor and expenses, shall be the amount reflected in Exhibit B.

5. INDEMNIFICATION AND HOLD HARMLESS:

[See Section 13 of Exhibit A - General Conditions]

Service Provider further agrees to protect, defend, indemnify, and hold harmless the CITY, its council members, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the Service Provider.

6. TERMINATION FOR CAUSE:

The City may terminate this Contract for cause upon ten (10) days prior written notice to the Service Provider of the Service Provider's default in the performance of any term of this Contract. Such termination shall be without prejudice to any of the City's rights or remedies provided by law.

7. TERMINATION FOR CONVENIENCE:

The City may terminate this Contract for its convenience at any time upon 30 days written notice to the Service Provider. In the event of the City's termination of this Contract for convenience, the Service Provider will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Service Provider who shall itemize each element of performance.

8. TERMINATION FOR FUND APPROPRIATION:

The City may unilaterally terminate this Contract due to a lack of funding at any time by written notice to the Service Provider. In the event of the City's termination of this Contract for fund appropriation, the Service Provider will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Service Provider which shall itemize each element of performance.

9. CONTRACT NOT TO DISCRIMINATE:

During the performance of this Contract, the Service Provider will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, or disability which does not preclude the applicant or employee from performing the essential functions of the position. The Service Provider will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, color, sex, national origin, age, or disability which does not preclude the applicant from performing the essential functions of the job. The Service Provider will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provision will be binding upon each subservice provider, providing that the foregoing provisions shall not apply to contracts or subservice providers for standard commercial supplies of raw materials.

10. ASSIGNMENT:

The Service Provider shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the City in writing.

11. WAIVER:

A waiver by either party of any breach of any provision, term, covenant, or condition of this Contract shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

12. SEVERABILITY:

The parties agree that each of the provisions included in this Contract is separate, distinct and severable from the other and remaining provisions of this Contract, and that the invalidity of any Contract provision shall not affect the validity of any other provision or provisions of this Contract.

13. GOVERNING LAW:

The parties agree that this Contract shall be governed and construed in accordance with the laws of the State of Georgia. This Contract has been signed in DeKalb County, Georgia.

14. MERGER CLAUSE:

The parties agree that the terms of this Contract include the entire Contract between the parties, and as such, shall exclusively bind the parties. No other representations, either oral or written, may be used to contradict the terms of this Contract.

(Signatures Next Page)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have caused this **CONTRACT** to be signed, sealed and delivered.

Brookhaven, GEORGIA

By: _____

J. Max Davis
Mayor
City of Brookhaven, Georgia

ATTEST:

Susan Hiott

City Clerk

APPROVED AS TO FORM:

Thompson Kurrie, Jr. City Attorney

SERVICE PROVIDER:

BY: _____

Signature

Print Name

Title

ATTEST:

Signature

Print Name
Corporate Secretary
(Seal)

Exhibit B

GENERAL CONDITIONS

1. SCOPE OF WORK

The Contract will be to provide to the City in accordance with the Contract Documents. All work shall be performed in accordance with the Scope of Services attached hereto as Exhibit B.

2. REGULATIONS

- 2.1 The Service Provider shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the work specified herein.
- 2.2 The Service Provider shall obtain all permits, licenses and certificates, or any such approvals of plans or specifications as may be required by Federal, State and local laws, ordinances, rules and regulations, for the proper execution of the work specified herein.
- 2.3 During the performance of this Contract, the Service Provider shall keep current and, if requested by the City, provide copies of any and all licenses, registrations or permits required by applicable governing agencies. The Service Provider shall keep a copy of any and all licenses, registrations and permits on the job site while performing the Contract work.
- 2.4 The Service Provider will comply with the City of Brookhaven's Financial Management and Purchasing Policies.

3. [INTENTIONALLY OMITTED]

4. SERVICE PROVIDER'S PERSONNEL

- 4.1 The Service Provider will abide by all State and Federal regulations on wages and hours of an employee dealing with the employment relationship between the Service Provider and its subsidiaries or related parties and its employees, including but not limited to the Federal National Labor Relations Act, the Federal Fair Labor Standards Act, the Federal Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act.
- 4.2 The Service Provider shall require all prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that such legal aliens are eligible to be employed in the United States. This includes any requirement for participation in the DHS e-Verify or SAVE program.
- 4.3 Should the Service Provider engage employees who are illiterate in English, it will be the Service Provider's responsibility and obligation to train such employees to be able to identify and understand all signs and notices in and/or around the areas that relate to them or the services being performed by them pursuant to this Contract. In addition, the Service Provider will have someone in attendance at all times who can communicate instructions to said employee.
- 4.4 The Service Provider shall maintain a drug-free workplace within the meaning of the Georgia Drug-free Workplace Act. No employee shall be hired by a Service Provider for work on the City's premises prior to such employee having tested negative for drugs. In addition, existing employees of the Service Provider must be subject to drug testing by the Service Provider upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Service Provider. Copies shall be provided to the City, if requested.
- 4.5 The Service Provider shall transfer promptly from the City any employee or employees that the City advises are not satisfactory, and replace such personnel with employees satisfactory to the City; but in no event shall the City be responsible for monitoring or assessing the suitability of any employee or agent of the Service Provider.
- 4.6 The Service Provider's employees shall be instructed that no gratuities shall be solicited or accepted for any reason whatsoever from the tenants, customers or other persons at the City.
- 4.7 A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the City.
- 4.8 [Intentionally omitted].

4.9 [Intentionally omitted].

4.10 [Intentionally omitted].

5. TOOLS AND EQUIPMENT

It shall be the sole responsibility of the Service Provider to provide for all tools, parts, and equipment necessary to perform work under this Contract.

6. PERFORMANCE REQUIREMENTS

6.1 The Service Provider shall perform all of its obligations and functions under the Contract in accordance with the Contract specifications and industry standards. The Service Provider shall adjust and coordinate its activities to the needs and requirements of the City and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the operations or activities of the City.

6.2 The Service Provider's personnel shall perform work in compliance with all Federal, State, and City of Brookhaven regulations.

6.3 Dates for commencement and completion of work shall be coordinated with the City's Authorized Representative (CAR).

6.4 Any work required beyond that which is specified herein shall be reported in advance to the City. At no time shall work beyond the scope be performed without prior written authorization from the City.

6.5 The Service Provider shall utilize maximum safety procedures. Tools and equipment will be in a good state of repair, safe to use, and be used in the manner in which they were intended. The Service Provider is required to inform all workers and concerned persons of the Material Safety Data on all products being utilized on this project. No materials or equipment will be left unattended at any time.

7. CONFIDENTIAL INFORMATION

7.1 In the course of performing the Contract work, the Service Provider may gain access to security-sensitive and other sensitive information of the City.

7.2 The Service Provider agrees to hold all City data and information in confidence and to make such information known only to its employees and subcontractors who have a legitimate need to know such information and only after advising such persons of the Service Provider's non-disclosure obligations.

7.3 The Service Provider shall seek the City's prior written consent before using for any purpose other than the fulfillment of the Service Provider's obligations hereunder, or before releasing, disclosing, or otherwise making such information available to any other person.

7.4 The Service Provider shall employ such practices and take such actions to protect the City's information from unauthorized use or disclosure as the Service Provider employs and takes to protect its own information, but in no event shall the Service Provider use less than reasonable efforts to protect the City's information.

7.5 The provisions of this Section shall survive the expiration or earlier termination of the Contract.

8. USE OF PREMISES

During the progress of the work specified herein, to the extent any work is performed on the City's premises, the Service Provider shall keep the premises free from accumulation of waste materials, and other debris resulting from the work. At the completion of each work day, the Service Provider shall remove daily all waste materials and debris from, and about the premises as well as tools, equipment, machinery and surplus material, and leave the site clean and ready for occupancy by the City.

9. SAFETY AND PROTECTION

The Service Provider shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Service Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the work site and other persons including, but not limited to, the general public who may be affected thereby.

10. COMPENSATION - INVOICE AND PAYMENT FOR SERVICES

- 10.1 The City shall pay the Service Provider, subject to any authorized deductions, the applicable prices set forth for each service authorized by the City, and actually delivered or performed, as the case may be, by the Service Provider to the satisfaction and acceptance, as appropriate, of the City. The timing of such payments shall be as set forth below in this Section.
- 10.2 The City shall pay the Service Provider the price as set forth within 30 days after completion of the services for the previous month, or 30 days after the City's receipt of the invoice for the month, whichever is later. The Service Provider shall invoice the City for the implementation services that were completed and accepted under the Contract, accompanied by such supporting documentation and other backup material as the City may reasonably require.
- 10.3 The Service Provider shall invoice with such supporting documentation and other backup material as the City may reasonably require.
- 10.4 The Service Provider shall deliver to the City for approval and acceptance, and before eligible for final payment of any amounts due, all documents and material prepared by the Service Provider for the City under this Contract.
- 10.5 The City shall pay the undisputed amount of the Service Provider's invoice, as it may be reduced to reflect unsubstantiated or unsatisfactory services. Items in dispute shall be paid upon the resolution of the dispute. No verification or payment of any amounts invoiced shall preclude the City from recovering any money paid in excess of that due under the terms of this Contract.
- 10.6 The Service Provider shall be obligated to pay promptly all proper charges and costs incurred by the Service Provider for labor and expenses incurred for the work performed hereunder. The City shall have the right, but not the obligation, to pay directly to third parties (including subcontractors) all past due amounts owed by the Service Provider to third parties for labor and materials used for the work hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amounts owed to Service Provider hereunder.
- 10.7 The Service Provider shall submit all invoices to: City of Brookhaven, GA, Accounts Payable, 4362 Peachtree Road NE, Brookhaven, GA 30319.

11. COMPLIANCE WITH LAWS AND REGULATIONS

- 11.1 The Service Provider shall perform its obligations and functions hereunder in compliance with the applicable laws of the United States, the State of Georgia, DeKalb County, the City of Brookhaven, any applicable rules, regulations or directives of any agency thereof, and the applicable regulations of the City. OSHA rules and regulations shall be followed at all times. The City shall have the right (but not the obligation) to contest or challenge by any means whatsoever any law, regulation, rule or directive which in any way affects or otherwise impacts upon the Service Provider's performance of its obligations and functions hereunder; the Service Provider shall cooperate to the fullest extent and take whatever action (including becoming a party in any litigation) the City should reasonably request in connection with any such challenge or contest by the City.
- 11.2 The Service Provider shall obtain and keep current all licenses, permits and authorizations, whether municipal, county, state or federal, required for the performance of its obligations and functions hereunder and shall pay promptly when due all fees therefore.
- 11.3 The Service Provider shall abide by all applicable state and federal regulations pertaining to wages and hours of an employee; including but not limited to the Service Provider's compliance with requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02.

12. SERVICE PROVIDER'S LIABILITY

The Service Provider shall be responsible for the prompt payment of any fines imposed on the City or the Service Provider by any other federal, state or local governmental agency as a result of the Service Provider's, or its subcontractor's (or the officers', directors', employees' or agents' of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit. The liability of the Service Provider under this Section 12 is in addition to and in no way a limitation upon any other liabilities and responsibilities which may be imposed by applicable law or by the indemnification provisions of Section 13 hereof, and such liability shall survive the expiration or earlier termination of this Contract.

13. INDEMNIFICATION AND INSURANCE

- 13.1 The Service Provider shall indemnify, defend and hold completely harmless the City, and the members (including, without limitation, members of the City's Council, and members of the boards and of the City), officers, employees and agents of each, from and against any and all liabilities (including statutory liability and liability under Workers' Compensation Laws), losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, paralegal and expert fees and reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing by (i) reason or on account of damage to or destruction or loss of any property of the City, or any property of, injury to or death of any person resulting from or arising out of or in connection with the performance of this Contract, or the acts or omissions of the Service Provider's directors, officers, agents, employees, subcontractors, licensees or invitees, in connection with the performance of this contract regardless of where the damage, destruction, injury or death occurred, **unless** such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused solely by the City's negligence or by the joint negligence of the City and any person other than the Service Provider or the Service Provider's directors, officers, agents, employees, subcontractors, licensees, or invitees, or (ii) arising out of or in connection with the failure of the Service Provider to keep, observe or perform any of the covenants or agreements in this Contract which are required to be kept, observed or performed by the Service Provider, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 13.4 below by or in favor of any person described in Section 13.5 below, or (iv) arising out of or in connection with any action by Service Provider or its directors, officers, agents, employees, subcontractors, licensees or invitees. The City agrees to give the Service Provider reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow the Service Provider or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this section, the Service Provider shall engage counsel reasonably acceptable to the City. In any suit, action, proceeding, claim or demand brought in respect of which the City may pursue indemnity, the City shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the City unless (1) the Service Provider and the City shall have mutually agreed to the contrary, (2) the Service Provider has failed within a reasonable time to retain counsel reasonably satisfactory to the City, or (3) the City and the Service Provider are both named parties in any such proceeding and, in the sole judgment of the City, representation of both the City and the Service Provider by the same counsel would be inappropriate due to actual or potential differing interests between them. The indemnification provisions of this Section 14 shall survive the expiration or earlier termination of this Contract with respect to any acts or omissions occurring during the term of the Contract. Notwithstanding anything contained in the forgoing indemnity, any claim for indemnity by the City for claims of thirds parties alleging harm due to the professional services provided by Service Provider, to the fullest extent permitted by law, Service Provider shall indemnify City from and against losses, damages, and judgments arising from such claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to have been caused by a negligent act, error or omission of Service Provider or its sub-Service Providers in the performance of professional services under this Agreement.
- 13.2 In addition to indemnification provisions stated above, if the City's use of any service, software, firmware, programming, or other item provided by or on behalf of the Service Provider is enjoined due to infringement of another person or entity's intellectual property rights, the Service Provider shall promptly, at its sole cost and expense, modify the infringing item so that it no longer infringes, procure for the City the legal right to continue using the infringing item, or procure for the City a non-infringing item, or procure for the City a non-infringing replacement item having equal or greater functional capabilities as the infringing item.
- 13.3 The Service Provider shall assume all responsibility for loss caused by neglect or violation of any state, federal, municipal or agency law, rule, regulation or order. The Service Provider shall give to the proper authorities all required notices relating to its performance, obtain all official permits and licenses, and pay all proper fees and taxes. It shall promptly undertake proper monetary restitution with respect to any injury that may occur to any building, structure or utility in consequence of its work. The Service Provider will notify the City in writing of any claim made or suit instituted against the Service Provider because of its activities in performance of the Contract.

- 13.4 No recourse under or upon any obligation, covenant or agreement contained in this Contract, or any other agreement or document pertaining to the work or services of the Service Provider hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Contract, shall be had against any member (including, without limitation, members of the City's Council, or members of the citizens advisory committees of each), any officer, employee or agent, as such, past, present, or future of the City, either directly or through the City or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for any sum that may be due and unpaid by the City. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, officer, employee, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for the payment for or to the City, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by the City, is expressly waived and released as a condition of and in consideration of the execution of this Contract and the promises made to the Service Provider pursuant to this Contract.
- 13.5 In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Service Provider, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the Service Provider under this Section 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Service Provider or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.
- 13.6 No provisions of Section 13 herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that the City may have as to any party or person described therein.
- 13.7 Insurance
- 13.7.1 General Liability and Automobile Liability. The Service Provider shall purchase and maintain in force during the term of the Contract, at its own cost and expense, to protect the Service Provider, the City, and the members (including, without limitation, all members of the governing City's Council and the citizens' advisory committees of each), officers, agents, and employees of each, from and against any and all liabilities arising out of or in connection with the Service Provider's performance of the Contract work:
- (1) Commercial general liability insurance with coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence, and with contractual liability coverage for Service Provider's covenants to and indemnification of the City under the Contract, and
 - (2) Automobile liability insurance with policy limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident or occurrence covering each motor vehicle operated on City property.
- 13.7.1.1 Self-Insured Retention. Service Provider's commercial general liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000, if the value of the Contract is less than \$1,000,000, and not be subject to a self-insured retention exceeding \$100,000, if the Contract is \$1,000,000 or more, unless approved by the City Manager. Service Provider's automobile liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000, unless approved by the City Manager.
- 13.7.1.2 Additional Insured Endorsement. Service Provider agrees and shall cause the City their members (including, without limitation, members of the City's Council and members of the citizens' advisory committees of each), officers, employees, and agents to be named as additional insured's under such policy or policies of commercial general and automobile liability insurance.
- 13.7.2 Workers' Compensation and Employer's Liability. If Service Provider has any employee working on City property, Service Provider shall procure and maintain in force during the term of the Contract (i) workers' compensation insurance, and (ii) employer's liability insurance. The policy limits of the Service Provider's employer's liability insurance shall not be less than \$100,000 for "each accident," \$500,000 for "disease policy limit," and \$100,000 for "disease each employee." If the Service Provider is self insured, the Service Provider shall provide proof of self-insurance and authorization to self-insure as required by applicable state laws and regulations.

- 13.7.3 Professional Liability Insurance. The Service Provider shall purchase and maintain in force during the term of the Contract, Professional Liability insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render professional services under the Contract in the amount of at least ONE MILLION DOLLARS (\$1,000,000.00) per claim. Such insurance must contain nose and tail coverage to include work performed by the Service Provider from the project's inception date and until such time as the Statue of Limitations has run for the work done on the project.
- 13.7.4 Health Insurance. Not applicable.
- 13.7.5 Garage Liability Insurance. Not applicable.
- 13.7.6 Garage Keeper's Legal Liability Insurance. Not applicable.
- 13.7.7 Crime Coverage. Not applicable.
- 13.7.8 Pollution Liability Insurance. Not applicable.
- 13.7.9 Deductibles. The Service Provider's policies of insurance required by this Section 13.7 may require the Service Provider's payment of a deductible, provided the Service Provider's insurer is required to pay claims from the first dollar at 100% of the claim value without any requirement that the Service Provider pay the deductible prior to its insurer's payment of the claim.
- 13.7.10 Other Insurance Requirements. All insurance policies required by this Section 13.7 shall provide that they are primary insurance with respect to any other valid insurance the City may possess, and that any other insurance the City does possess shall be considered excess insurance only. All such insurance shall be carried with a company or companies which meet the requirements of Section 14.2 of these General Conditions, and said policies shall be in a form satisfactory to the City. A properly completed and executed Certificate of Insurance on a form provided or approved by the City (such as a current ACORD certificate of insurance) evidencing the insurance coverage required by this Section shall be furnished to the City upon the Service Provider's execution of the Contract. The Service Provider shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Service Provider's required insurance coverage except that ten (10) days notice of cancellation for non-payment is required. For purposes of this Section 13.7.10, an "adverse material change" shall mean any reduction in the limits of the insurer's liability, any reduction, non-renewal or cancellation of any insurance coverage, or any increase in the Service Provider's self-insured retention. Prior to the expiration of any such policy, the Service Provider shall file with the City a certificate of insurance showing that such insurance coverage has been renewed. If the insurance coverage is canceled or reduced, the Service Provider shall, within five (5) days after such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City. If the Service Provider fails to obtain or have such insurance reinstated, the City may, if it so elects, and without waiving any other remedy it may have against the Service Provider, immediately terminate this Contract upon written notice to the Service Provider. The City Manager shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Contract, and the Service Provider shall comply with all reasonable requests of the City Manager with respect thereto.

14. SURETY BONDS/LETTERS OF CREDIT/LIABILITY INSURANCE

- 14.1 A surety Bond/Letter of Credit is not required for this Contract.
- 14.2 Liability Insurance Companies furnishing insurance coverage required by these General Conditions shall (a) be approved to issue insurance policies in the State of Georgia, and (b) must have no less than a "B+" Financial Rating and a Financial Size Category of "Class VI" or higher according to the most current edition of A.M. Best's Insurance Reports. If the liability insurer is rated by A.M. Best's Insurance Reports at an "A-" Financial Rating and a Financial Size Category of "Class VIII" or higher than the City Manager may waive the requirement for the insurer to be approved by the State of Georgia.

15. CONTRACT ADJUSTMENTS

- 15.1 Notwithstanding any provision herein to the contrary, the City reserves the right to modify at any time the nature, method, scope, frequency, or timing of the Service Provider's obligations under this Contract (Contract Adjustments) in whatever manner it determines to be reasonably necessary for the proper completion of the Service Provider's work hereunder. Both parties agree that, should any Contract Adjustments be made, the Service Provider's compensation will be adjusted accordingly, in such amount or amounts as will be mutually agreed to by means of good faith negotiation by the City and the Service Provider and, to the extent possible, by reference to any unit costs already established in the Proposal. Without exception, all deletions or additions to the scope of work will be set forth in a written Amendment to this Contract.
- 15.2 Notwithstanding the foregoing, the City shall have the right to terminate this Contract herein should the Service Provider and the City fail to reach agreement on the adjusted compensation within thirty (30) days after the date of the Contract Adjustment.
- 15.3 Notwithstanding the foregoing, there shall be no upward adjustment of the compensation on account of any Contract Adjustment made necessary or appropriate as a result of the mismanagement, improper act, or other failure of the Service Provider, its employees, agents, or its subcontractors to properly perform its obligations and functions under this Contract.

16. SUBCONTRACTORS

- 16.1 The Service Provider shall perform all of its obligations and functions under this Contract by means of its own employees, or by a duly qualified subcontractor which is approved in advance by the City. Such subcontractor which is an affiliate, parent, or subsidiary company; or had principal owners, relatives, management, or employees common to the Service Provider; or any other party that has the ability to significantly influence the management or daily business operations of the subcontractor must be disclosed in writing to the City Manager. Goods and services provided by subcontractors which are reimbursed by the City must be bona fide arm's-lengths transactions. In the event a subcontractor is employed, the Service Provider shall continuously monitor the subcontractor's performance, shall remain fully responsible to ensure that the subcontractor performs as required and itself perform or remedy any obligations or functions which the subcontractor fails to perform properly. Nothing contained herein shall be construed to prevent the Service Provider from using the services of a common carrier for delivering goods to the City. The City approves the sub-Service Providers listed in the Statement of Qualifications.
- 16.2 This Contract shall be referred to and incorporated within any contractual arrangement between the Service Provider and a subcontractor and, in such contractual arrangement; the subcontractor shall give its express written consent to the provisions of this Section 16. To the extent feasible, the provisions of this Contract shall apply to any such subcontractor in the same manner as they apply to the Service Provider. However, such application shall neither make any subcontractor a party to this Contract, nor make such subcontractor a third party beneficiary hereof.
- 16.3 In the event that the Service Provider employs a subcontractor, then the City may require that copies of invoices for all work (including invoices submitted to the Service Provider for work performed by a subcontractor) shall be submitted to the City by the Service Provider and the City shall pay all compensation to the Service Provider. It shall be the sole responsibility of the Service Provider to deal with a subcontractor with respect to the collecting and submission of invoices and the payment of compensation. In no event shall the City have any obligation or liability hereunder to any subcontractor, including, in particular, any obligations of payment.

17. DEFAULT AND TERMINATION

- 17.1 In the event that:
 - 17.1.1 the Service Provider shall fail to keep, perform or observe any of the promises, covenants or agreements set forth in this Contract (provided that notice of the first failure shall have been given to the Service Provider, but whether or not the Service Provider shall have remedied any such failure); or
 - 17.1.2 the Service Provider shall fail to keep, perform or observe any promise, covenant, or agreement set forth in this Contract, and such failure shall continue for a period of more than five (5) days after delivery to the Service Provider of a written notice of such breach or default; or
 - 17.1.3 the Service Provider's occupational or business license shall terminate or the Service Provider shall fail to provide the City with any bond, letter of credit, or evidence of insurance as required by the Contract Documents, for any reason; or

- 17.1.4 the Service Provider fails for any reason to provide the City with an acceptable renewal or replacement bond or letter of credit within the time period specified by a provision of this Contract; or
 - 17.1.5 the Service Provider shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
 - 17.1.6 the Service Provider shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or
 - 17.1.7 there is any assignment by the Service Provider of this Contract or any of the Service Provider's rights and obligations hereunder for which the City has not consented in writing; or
 - 17.1.8 the Service Provider shall default on any other agreement entered into by and between Service Provider and the City, then, in its discretion, the City shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Service Provider. In the event that the City terminates this Contract for default, or the Service Provider abandons or wrongfully terminates the Contract, the Service Provider shall be paid for compensation earned to the date of termination or abandonment (but the City shall have the right to reduce by off-set any amounts owed to the Service Provider hereunder or under any other Contract or obligation by the amount of the City's damages and any amounts owed by the Service Provider to the City), but the Service Provider shall not be compensated for any profits earned or claimed after the receipt of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Contract in part or whole for the Service Provider's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.
- 17.2 Notwithstanding anything else herein contained, the City may terminate this Contract in whole or in part at any time for its convenience by giving the Service Provider thirty (30) days written notice. In that event, the Service Provider shall proceed to complete any part of the work, as directed by the City, and shall settle all its claims and obligations under the Contract, as directed by the City. The Service Provider shall be compensated by the City in accordance with the provisions hereof, including in particular Section 2 of these General Conditions, provided, however, that in no event shall Service Provider be entitled to compensation for work not performed or for anticipatory profits. Service Provider shall justify its claims, as requested by the City, with accurate records and data.
- 17.3 Bankruptcy and Liquidation - In the event the Service Provider (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismitted for a period of sixty (60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Service Provider or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Contract or any agreement supplementary hereto, the City shall have the following rights:
- (i) In the event of a rejection of this Contract or any agreement supplementary hereto, the City shall be permitted to retain and use any back-up or archival copies of the software licensed hereunder under this Agreement for the purpose of enabling it to mitigate damages caused to the City because of the rejection of this Contract. The City shall exert reasonable efforts to mitigate such damages by use of such back-up or archival copies.
 - (ii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the City to, as applicable, the Service Provider or the bankruptcy trustee or receiver. The Service

Provider or such bankruptcy trustee or receiver shall not interfere with the rights of the City as licensee as provided in this Contract or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee and shall, if requested, cause a copy of such Source Material(s) to be available to the City.

(iii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights of setoff with respect to this Contract under the Bankruptcy Code or applicable non-bankruptcy law; or In the event of a rejection of this Contract or any agreement supplementary hereto, the City may retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights under section 503(b) of the Bankruptcy Code.

18. CITY'S AUTHORIZED REPRESENTATIVE

During the term of this Contract, the City Manager or designee may from time to time designate an individual to serve as the City's Authorized Representative (CAR) and an Assistant CAR designated to serve in that capacity in the absence of the CAR, who shall have such authority to act on the City's behalf as the City Manager may from time to time actually delegate to such person, but in no event shall the CAR have authority to modify or terminate this Contract, or make final decisions with respect to amendments, time extensions, assignments, cost or payment adjustments or payment disputes.

19. ASSIGNMENT

Neither this Contract nor any of the Service Provider's rights or obligations hereunder may be assigned by the Service Provider without the City's prior written consent, which consent may be granted or withheld at the City's sole discretion. Any transfer of this Contract by merger, consolidation or liquidation (unless the stock of the Service Provider is traded on a national stock exchange or in a generally recognized over the counter securities market) any change in ownership of or power to vote a majority of the outstanding voting stock or ownership interests of the Service Provider shall constitute an assignment of this Contract for purposes of this Section. In the event the Service Provider assigns or subcontracts or attempts to assign or subcontract any right or obligation arising under this Contract without the City's prior written consent, the City shall be entitled to terminate this Contract pursuant to the provisions of Section 17 hereof.

20. NOTICES

20.1 Unless otherwise stated herein, all notices or other writings which the City is required or permitted to give to the Service Provider may be hand delivered, mailed via U.S. Certified Mail or sent next-day delivery by a nationally-recognized overnight delivery service to the Service Provider's address set forth in the Proposal. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to the Service Provider, or three (3) days following submission to the Service Provider by U.S. Certified Mail.

20.2 Unless otherwise stated herein, all notices or other writings which the Service Provider is required or permitted to give to the City may be hand delivered to the City Manager, mailed via U.S. Certified Mail, or sent next-day delivery by a nationally-recognized overnight delivery service. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to City, or three (3) days following submission to the City by U.S. Certified Mail. Any such notice shall be sent to:

City of Brookhaven, GA
ATTN: City Manager
4362 Peachtree Road NE
Brookhaven, GA 30319

Service Provider

20.3 Either party may change its notice address by written notice to the other given as provided in this section.

21. NONDISCRIMINATION

- 21.1 During the performance of this Contract, the Service Provider, for itself, its assignees and successors in interest agrees as follows:
- 21.1.1 **Compliance with Regulations.** The Service Provider shall comply with the Laws and Regulations as they may be amended from time to time (hereafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.
 - 21.1.2 **Nondiscrimination.** The Service Provider, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of any subcontractor, including procurement of materials and leases of equipment. The Service Provider shall not participate either directly or indirectly in the discrimination prohibited by the Regulations.
 - 21.1.3 **Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations either by competitive proposing or negotiation made by the Service Provider for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Service Provider of the Service Provider's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
 - 21.1.4 **Information and Reports.** The Service Provider shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources or information, and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Service Provider is in the exclusive possession of another who fails or refuses to furnish this information, the Service Provider shall so certify to the City, as appropriate, and shall set forth what efforts it has made to obtain the information.
 - 21.1.5 **Sanctions for Noncompliance.** In the event of the Service Provider's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such Contract Sanctions as it may determine to be appropriate, including but not limited to:
 - 21.1.5.1 Withholding of payments to the Service Provider under the Contract until the Service Provider complies, and/or
 - 21.1.5.2 Cancellation, termination or suspension of the Contract, in whole or in part.
 - 21.1.6 **Incorporation of Provisions.** The Service Provider shall include the provisions of subsections 21.1.1 through 21.1.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Service Provider shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Service Provider may request the City to enter into such litigation to protect the interest of the City and, in addition, the Service Provider may request the United States to enter into such litigation to protect the interests of the United States.
- 21.2 The Service Provider assures the City that it will comply with the pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, marital status, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision shall bind the Service Provider from the period beginning with the initial solicitation through the completion of the Contract.

22. COPYING DOCUMENTS

The Service Provider hereby grants the City and its agent's permission to copy and distribute any and all materials and documents contained in, comprising, or which are otherwise submitted to the City with or in connection with the Service Provider's Proposal or which are contained in the Contract Documents (the "Submittals"). The permission granted by the Service Provider shall be on behalf of the Service Provider and any and all other parties who claim any rights to any of the materials or documents comprising the Submittals. Such permission specifically authorizes the City and its agents to make and distribute such copies of the Submittals or portions thereof as may be deemed necessary or appropriate by the City for its own internal purposes or for responding to requests

for copies from any member of the public regardless of whether the request is specifically characterized as a public records request pursuant to Georgia Code. This provision shall survive the expiration or termination of the Contract.

23. GENERAL PROVISIONS

- 23.1 The Contract Documents consist of the Contract, the Proposal Forms, the Instructions to Proposers, Request for Qualifications, all Addendum(s) issued prior to execution of this Contract, these General Conditions and Specifications. Together, these documents comprise the Contract and all the documents are fully a part of the Contract as if attached to the Contract or repeated herein. Precedence of the Contract Documents shall be as follows: (i) addendum(s) to the Contract Documents, (ii) the Contract, (iii) the General Conditions, (iv) the Scope of Work in Exhibit B, (v) the Proposal Forms, (vi) the Instructions to Proposers, (vii) the Specifications, and (viii) the Request.
- 23.2 This Contract represents the entire agreement between the parties in relation to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to such subject matter, and there are no contemporaneous written or oral agreements, terms or representations made by any party other than those contained herein. No verbal or written representations shall be relied upon outside the Contract terms and amendments. Without exception, all deletions or additions to the scope of work will be set forth in a written amendment to this Contract. No amendment, modification, or waiver of this Contract, or any part thereof, shall be valid or effective unless in writing signed by the party or parties sought to be bound or charged therewith; and no waiver of any breach or condition of this Contract shall be deemed to be a waiver of any other subsequent breach or condition, whether of a like or different nature.
- 23.3 The Service Provider shall, during the term of this Contract, repair any damage caused to real or personal property of the City and/or its tenants, wherever situated, caused by the intentional, reckless, or negligent acts or omissions of the Service Provider's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the City, the Service Provider shall reimburse the City for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the City.
- 23.4 The Service Provider warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Service Provider or a subcontractor, shall cause any claim, lien or encumbrance to be made against any property of the City, and the Service Provider shall indemnify and save the City harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Service Provider shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Contract.
- 23.5 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either the City or the Service Provider. This Contract shall be deemed to be made, construed and performed according to the laws of the State of Georgia. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this Contract or any matter in connection therewith shall be brought exclusively in a court of competent jurisdiction in DeKalb County, Georgia, and the Service Provider waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Service Provider agrees to submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City.
- 23.6 The section headings herein are for the convenience of the City and the Service Provider, and are not to be used to construe the intent of this Contract or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.
- 23.7 The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.
- 23.8 The delay or failure of the City at any time to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of that breach or any subsequent breach or default in the terms, conditions, or covenants of this Contract. The Service Provider shall not be relieved of any obligation hereunder on account of its failure to perform by reason of any strike, lockout, or other labor disturbance.

- 23.9 If the City shall, without any fault, be made a party to any litigation commenced between the Service Provider and a third party arising out of the Service Provider's operations and activities at the premises, then the Service Provider shall pay all costs and reasonable attorney's fees incurred by or imposed upon the City in connection with such litigation for all trial and appellate proceedings. The City shall give prompt notice to the Service Provider of any claim or suit instituted against it by such third party. The provisions of this Section supplement and are not intended to be in lieu of the indemnification provisions of Section 5 hereof. The provisions of this Section shall survive the acceptance of the services and payment therefore, and the expiration or earlier termination of this Contract.
- 23.10 The City shall have the right to recover from the Service Provider all of the City's costs and expenses incurred in enforcing the provisions of this Contract including, but not limited to, (1) the cost of administrative investigation and enforcement (including, without limitation, audit fees and costs, attorneys' fees) and (2) the cost of any trial, appellate or bankruptcy proceeding (including, without limitation, investigation costs, audit fees and costs, attorneys' fees, court costs, paralegal fees and expert witness fees). This provision shall survive the expiration or termination of the Contract.
- 23.11 The Service Provider shall not during the term of the Contract knowingly hire or employ (on either a full-time or part-time basis) any employee of the City.
- 23.12 The Service Provider shall be required, during the term of the Contract, at no additional cost to the City, to take such reasonable security precautions with respect to its operations at City Hall as the City in its discretion may from time to time prescribe. The Service Provider shall comply with all regulations, rules and policies of any governmental authority, including the City, relating to security issues.
- 23.13 The City may, but shall not be obligated to, cure, at any time, upon five (5) days written notice to the Service Provider (provided, however, that in any emergency situation the City shall be required to give only such notice as is reasonable in light of all the circumstances), any default by the Service Provider under this Contract; whenever the City so cures a default by the Service Provider, all costs and expenses incurred by the City in curing the default, including, but not limited to, reasonable attorneys' fees, shall be paid by the Service Provider to the City on demand.
- 23.14 The City shall, in its discretion, be entitled to deduct from the compensation to which the Service Provider is otherwise entitled hereunder, an amount equal to any liabilities of the Service Provider to the City which are then outstanding. In the event that additional work beyond the scope of this Contract is requested by the City Manager and it results in any extra charges to the City, the Service Provider shall so advise the City in writing of the amount of the extra charges. The City is not required to pay any extra charges for additional work unless such work and the charges therefore have been approved in advance and have been confirmed in writing within twenty-four (24) hours by the City Manager, in his or her exclusive discretion.
- 23.15 The Service Provider is an independent Service Provider and nothing contained herein shall be construed as making the Service Provider an employee, agent, partner or legal representative of the City for any purpose whatsoever. The Service Provider acknowledges that it does not have any authority to incur any obligations or responsibilities on behalf of the City, and agrees not to hold itself out as having any such authority. Nothing contained in this Contract shall be construed to create a joint employer relationship between the City and the Service Provider with respect to any employee of the Service Provider or of its subcontractors.
- 23.16 The Service Provider and its subcontractors, if any, shall maintain complete and accurate books and records in accordance with generally accepted accounting principles, consistently applied, and shall be in a form reasonably acceptable to the City Manager or designee. The Service Provider and its subcontractors shall account for all expenses of any nature related to transactions in connection with this Contract in a manner which segregates in detail those transactions from other transactions of the Service Provider and subcontractors and which support the amounts reported and/or invoiced to the City. At a minimum, the Service Provider's and subcontractor's accounting for such expenses and transactions shall include such records in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the City at its offices; a computer run hard copy; or legible microfilm or microfiche, together with access to the applicable reader. All such books and records and computerized accounting systems, shall upon reasonable notice from the City be made available in DeKalb County, Georgia, for inspection, examination, audit and copying by the City through and by its duly authorized representatives at any time for up to four (4) years after the year to which books and records pertain. Such inspection, examination, or audit may include, but is not limited to a review of the general input, processing, and output controls of information systems, using read only access, for all computerized applications used to record financial transactions and information. The Service Provider and subcontractor shall freely lend its own assistance in a timely manner in making such inspection, examination, audit, or copying and, if such records are maintained in electronic and other machine readable format, shall provide the City and/or its representative such

assistance as may be required to allow complete access to such records. The City Manager may require the Service Provider and subcontractors to provide other records the City Manager, in his or her sole discretion, deems necessary to enable the City to perform an accurate inspection, examination or audit of expenses incurred in and transactions related to performance of this Contract. Such records shall be provided within thirty (30) days of request thereof. In the event that expenses incurred or reimbursed are found by such inspection, examination, or audit to have been overpaid, the Service Provider and its subcontractors agree that such amounts shall be payable to the City. If, prior to the expiration of the above-stated four (4) year record retention period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Contract by the City, the Service Provider, or a third party, the Service Provider shall continue to maintain all such records, and the City shall continue to have the right to inspect such records in the manner stated above, until the inspection, examination, audit, claim, or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the expiration or earlier termination of this Contract. In the event of any conflict between any provision of this Contract and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Contract shall control even where this Contract references such provisions or standards. In particular, without limitation, the Service Provider and subcontractors shall maintain all records required under this Contract to the full extent required hereunder, even if some or all such records would not be required under such generally accepted accounting principles or auditing standards. If as a result of an inspection, examination or audit, it is established that amounts are due from the Service Provider to the City, the Service Provider shall forthwith, upon written demand from the City, pay the City such amount, together with interest on the amount due at the rate of eighteen (18%) percent per annum, or if less, the maximum rate of interest allowed by law, from the date such additional amounts were overpaid by the City. Further if such inspection, examination or audit establishes that the Service Provider has over billed such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Service Provider.

- 23.17 The Service Provider and subcontractors shall prepare and provide the City with all detailed reports as required under the Contract on a timely basis. The City reserves the right to modify the reporting procedures or the form and content of any report as it deems necessary.
- 23.18 There are no third party beneficiaries to this Contract and nothing contained herein shall be construed to create such.
- 23.19 Time is of the essence for the performance of each of the Service Provider's obligations under this Contract.
- 23.20 In computing any period of time established under this Contract, except as otherwise specified herein the word "days," when referring to a period of time that is ten (10) days or less means business days, and when referring to a period of time that is more than ten (10) days means calendar days. The day of the event, from which the designated period of time begins to run shall not be included. A business day is any day other than Saturday, Sunday, or Federal, State of Georgia or City holidays.
- 23.21 The Service Provider agrees to perform all acts and execute all supplementary instruments or documents which may be reasonably necessary to carry out or complete the transaction(s) contemplated by this Contract.
- 23.22 The City reserves the right to further develop, improve, repair and alter the facilities and all roadways, and parking areas, as it may reasonably see fit, free from any and all liability to the Service Provider for loss of business or damages of any nature whatsoever to the Service Provider occasioned during the making of such improvements, repairs, alterations and additions, including, but not limited to, any damages resulting from negligence of the City or its employees, agents or Service Providers.
- 23.23 The Service Provider and the City hereby mutually waive any claim against each other and their respective members, officials, officers, agents and employees for damages (including damages for loss of anticipated profits) caused by any suit or proceedings brought by either of them or by any third party directly or indirectly attacking the validity of this Contract or any part thereof, or any addendum or amendment hereto, or the manner in which this Contract was solicited, awarded or negotiated, or arising out of any judgment or award in any suit or proceeding declaring this Contract, or any addendum or amendment hereto, null, void or voidable or delaying the same, or any part thereof, from being carried out.
- 23.24 At the option of the Service Provider, the products and/or services provided under the Contract resulting from this solicitation may be provided to other governmental agencies, including the State of Georgia, its agencies, political subdivisions, counties and cities under the same terms and conditions, including price, as such products and/or services are provided under this Contract. Each governmental agency allowed by the Service Provider to purchase products and/or services in connection with this Contract shall do so independent of the City or any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods and services ordered, received and accepted by it. The City shall have no liability

to the Service Provider or any governmental agency resulting from the purchase by that agency of products and/or services from the Service Provider in connection with this Contract.

24. GRATUITIES, REBATES, OR KICKBACKS.

- 24.1 GRATUITIES. It shall be unethical for any person to offer, give or agree to give any employee or official of the City or for any employee or official of the City to solicit, demand, accept from another person, a gratuity, rebate, loan, offer of employment or other services or property of value in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, including the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or proposal therefore in any manner inconsistent with the State of Georgia's Department of Administrative Services Gratuity Policy. Rebates normally or routinely offered to customers in the ordinary course of business for the purchase of goods and services are acceptable and are the property of the City.
- 24.2 KICKBACK AND REBATES. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor to this Contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontractor or order.

***** END OF GENERAL CONDITIONS *****